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BEFORE THE ARIZONA CORPORATION COMMISSION

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**IN THE MATTER OF U S WEST
COMMUNICATIONS, INC.'S
COMPLIANCE WITH § 271 OF THE
TELECOMMUNICATIONS ACT OF 1996**

Docket No. T-00000A-97-0238

**AT&T'S COMMENTS ON STAFF'S
PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW ON
GENERAL TERMS AND
CONDITIONS, BFR AND
FORECASTING.**

AT&T Communications of the Mountain States, Inc. and TCG Phoenix
(collectively, "AT&T") hereby file their comments on Staff's Proposed Findings of Fact
and Conclusions of Law on Qwest's Compliance with General Terms and Conditions,
BFR and Forecasting, dated December 27, 2001 ("Staff Report" or "Report").

I. INTRODUCTION

Staff's Report contains over 120 pages of text discussing the various parties' positions. AT&T does not have the time or resources to verify the accuracy of Staff's Report, in part, because of the time allotted by the schedule and because of the numerous other reports on Qwest Corporation's ("Qwest") operations support systems that AT&T is currently reviewing and must comment on shortly. Therefore, AT&T reserves the right to point out omissions and inaccuracies in future pleadings and proceedings.

AT&T may also elect not to comment on a particular issue or Staff recommendation. This should not be construed as an acceptance by AT&T of such recommendation, and AT&T reserves the right to oppose such recommendation in other proceedings.

II. COMMENTS

A. Disputed Issue No. 1: Rates, Terms and Conditions for New Products.

In resolution of Disputed Issue No. 1, Staff makes the following statements:

However, Staff's acceptance of Qwest's proposed language is conditioned upon a finding that Qwest's revised CICMP process does indeed streamline the process for new products. Therefore, Staff's ultimate approval of Qwest's position requires a review of the revised CICMP, and a confirmation that it resolves CLEC concerns.¹

AT&T is concerned that the Conclusions of Law, paragraphs 1 through 8, do not reflect this requirement. Although paragraph 8 conditions the finding of compliance with the requirement that Qwest modify the SGAT consistent with the resolution of the impasse issues, the conditions imposed by Staff requiring a streamline CICMP process and subsequent review by Staff does not fall within the scope of the condition in paragraph 8 of the Conclusions of Law.

AT&T respectfully requests a specific paragraph in the Conclusions of Law identifying the conditions of Staff identified above that are contained in Staff's Report at paragraph 447.

¹ Staff Report, § 447.

B. Disputed Issue No. 2: Confidentiality of CLEC Forecasts.

As a point of clarification, the multistate Facilitator's report stated that the language regarding legal personnel in paragraph 457 of Staff's Report should replace the language in SGAT § 5.16.9.1 that reads "legal personnel, if a legal issue arises about that forecast." AT&T believes this is what Staff intends as well. If it is not, AT&T requests that Staff clarify its intent.

C. Disputed Issue No. 3: Indemnification.

AT&T has several issues with Staff's recommendation to resolve the issue raised by AT&T and WorldCom. First, it is ambiguous whether Staff requires Qwest to include AT&T and WorldCom's interconnection language on indemnification in the SGAT. This should be explicit, as should the specific sections of the AT&T and WorldCom interconnection agreements Staff is referring to.

Second, Staff can only speculate whether the provisions from AT&T and WorldCom's interconnection agreements are adequate or even resolve the concerns raised by AT&T and WorldCom ("[T]hese provisions are *likely* currently standardized and... considerable time was *probably* devoted to working out these provisions when agreements were originally negotiated.")² Although some of the language was agreed upon, a portion of section 18 of AT&T and WorldCom's interconnection agreements was arbitrated.³ Furthermore, Staff makes no finding whether the language eliminates CLEC liability for end-user customer retail service quality penalties; it does not. The issue of

² Staff Report, ¶ 464.

³ Docket Nos. U-2428-96-417 & E-1051-96-417, Procedural Order dated July 14, 1997, at 4-5.

service quality penalties was sent to a generic proceeding.⁴ The Administrative Law Judge never issued an order resolving the issue.

Third, Staff puts off the issue regarding damages and the interplay of the SGAT and performance assurance plan ("PAP") to the discussion of the PAP, knowing full well that AT&T did not participate in the PAP discussions. Furthermore, the issue is an SGAT issue, not a PAP issue, and needs to be resolved so that appropriate SGAT language is addressed and incorporated in the SGAT.

CLECs cannot absorb losses and damages that should rightfully be Qwest's. Nor can the PAP serve to shield Qwest from the actual losses incurred by CLECs. If so, the PAP is nothing but a sham which would shift losses to CLECs under the guise of a backsliding provision required to obtain section 271 approval.

Staff must address the issue regarding Qwest liability to CLECs because of the failure of Qwest to comply with retail service quality rules. Staff should also explicitly identify the applicable indemnity language in the AT&T and WorldCom interconnection agreements that it recommends be incorporated in the SGAT.

D. Disputed Issue No. 4: Bonafide Request Process ("BFR").

It is unclear whether the Staff's "suggestion" in paragraph 476 of Staff's Report must be complied with by Qwest, or whether Qwest can simply ignore it. If Qwest must develop a series of criteria that would accelerate the productization of BFRs, than Staff should explicitly say so. Furthermore, if it is a condition of checklist compliance, the Conclusions of Law must also reflect the condition.

⁴ *Id.*, at 20.

E. Disputed Issue No. 8: Conflicts between the SGAT and the other Qwest Documents

Staff in its recommendation adopts Qwest's proposed SGAT section 2.3 and the first 3 sentences of section 2.3.1. AT&T has a problem with section 2.3.1, more specifically, the phrase "and the change has not gone through CICMP." This language implies that changes that have gone through CICMP have been agreed to by the parties. This is not always the case. Qwest has put CLEC-impacting changes through the CMP. CLECs may object but Qwest will implement the changes anyway. The language in section 2.3.1 would suggest that, since the change went through CMP (although not agreed to by the CLECs), the CLECs would not have the right to take the issue to dispute resolution and the change would flow through to the SGAT. AT&T recommends that the phrase "and that change has not gone through CICMP" be deleted.

F. Disputed Issue No. 9: Limitation of Liability Related to Performance Under the SGAT

Staff recommends that Qwest utilize the liability language now contained in the AT&T and WorldCom interconnection agreements, based on the understanding that there were extensive negotiations and hoping to avoid having to "reinvent the wheel."⁵ As an initial matter, AT&T is not sure what specific contract language Staff is referring to. AT&T interconnection agreement at section 19 contains the provisions on limitations of liability. Although portions of section 19 were agreed upon by AT&T and Qwest, the portion in section 19.3 on patterns of conduct was ordered by the Administrative Law Judge at the request of AT&T.⁶ AT&T agrees with the Judge's decision. The Staff

⁵ Staff Report, ¶ 506.

⁶ Procedural Order dated July 14, 1997, at 5-6.

should review section 19 of AT&T's interconnection agreement confirm that section 19 in its entirety should be included in the SGAT.

G. Disputed Issue No. 10: Sale of Exchanges.

Staff believes the issue regarding the sale of exchanges and the effect in any interconnection agreements is now moot. AT&T disagrees.

The Citizens sale highlighted the need for the SGAT provisions. Cancellation of the sale did not eliminate the need for certainty on the part of the CLECs. If an exchange where a CLEC is doing business is sold by Qwest, the CLEC is now at the mercy of the purchaser of the exchange. The CLEC will have customers and no interconnection agreement with the purchaser. The purchaser is given an undue advantage in negotiations, and the legal obligations of the purchaser during the period from the date of the purchase to the approval of an interconnection agreement is unclear.

CLECs should have some certainty that the new purchaser will abide by existing legal obligations of Qwest that are related to the exchanges. For example, the purchaser has to abide by existing right-of-way obligations made by Qwest or lose the right-of-way. The obligations contained in the interconnection agreements can be factored in the sales price, as are other obligations imposed on the purchaser through any sale. Interconnection agreements have definite dates and will ultimately be renegotiated. But most importantly, another sale could happen at any time for one or more exchanges. It is better to address the issue in the SGAT now instead of putting CLECs in an untenable situation and potentially putting CLEC customers at risk of having no service.

H. Disputed Issue No. 11: Scope of Audits.

“Staff concurs with Qwest that aspects of the CLEC proposed audits are too broad and there are other mechanisms available both within and external to the SGAT to ensure compliance.”⁷ As an initial matter, Staff’s recommendation is inconsistent with Staff’s recommendations resolving several previous issues – liability and indemnification. Staff assumed that the terms in Qwest and AT&T’s and WorldCom’s interconnection agreements “are likely currently standardized and that considerable time had been devoted to working out these provisions.”⁸ Staff saw no need to “reinvent the wheel.”⁹ The same basis was used for not rendering a decision on Qwest’s liability associated with the failure to perform a service or function under the SGAT.¹⁰ However, in this case, where WorldCom pointed out broader authority in its agreement, Staff chose to ignore it as a basis of resolving the issue.

The dispute resolution process requires actual knowledge on the CLEC before a complaint can be filed. As such, it is inadequate. The performance audits and biennial review have not been shown by Staff to address the CLECs’ concerns regarding the right of CLECs to examine whether Qwest is performing its obligations under the agreement.

Staff’s proposed language is internally inconsistent. On the one hand it permits a compliance audit. On the other hand, it prohibits investigations or testing for compliance. The language appears meaningless. It is definitely ambiguous.

AT&T respectfully requests that Staff review its recommendation and the rationale for its recommendation regarding the scope of audits.

⁷ Staff Report, ¶ 517.

⁸ *Id.* ¶ 464.

⁹ *Id.*

¹⁰ *Id.* ¶ 506.

III. CONCLUSION

AT&T recognizes Staff has expended considerable time and energy to draft Staff's Report and arrive at the recommendations contained therein. However, AT&T believes Staff needs to be more explicit in a number of its recommendations to remove any ambiguity and to avoid any confusion in the future.

Respectfully submitted this 14th day of January 2002.

**AT&T COMMUNICATIONS
OF THE MOUNTAIN STATES, INC.
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CERTIFICATE OF SERVICE

I, Shirley S. Woo, hereby certify that the original and 10 copies of **AT&T's Comments on Staff's Proposed Findings of Fact and Conclusions of Law on General Terms and Conditions, BFR and Forecasting** in Docket No. T-00000A-97-0238 were sent by overnight delivery on January 15, 2002 to:

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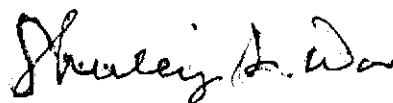
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